IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH: NAGPUR
CRIMINAL APPLICATION NO.2884 OF 2006

Ishwardayal Anantram Gedam and another
versus
State of Maharashtra

Mr. Agrawal, Advocate for the applicant
Mr. Jichkar, A. P. P. for the respondent

CORAM: S. R. DONGAONKAR, J.
DATE: 26.9.2006

Heard counsel for the parties.

The accused are charge-sheeted for the offence punishable under section 143, 364, 302 and 201 I.P.C. arising out of Crime No.107/2006 of Police Station, Tumsar. The allegations against the accused are that on account of enmity arising out of the property dispute and love affair of the wife of the accused and Shivdayal brother in law of the deceased. Accused committed murder of one Shivdayal and his wife Panchfula.

2] It needs to be noted that the learned Additional Sessions Judge by his order dated 3.8.2006 has released three

accused on bail. The order shows that those three accused have not been shown to be the offenders by direct or circumstantial evidence on record.

3] The learned A. P.P. points out that there are statements of some witnesses to show that these accused were heard of having committed murders of deceased. Thus, it appears that despite some evidence, suspecting their participation in the crime are released on bail.

4] Counsel for the applicant has contended that there is no reliable evidence on the point of bringing accused within the purview of section 302 of I.P.C. According to him this is a case of mere suspicion. Further according to him alleged place where the deceased were burried after causing death , the alleged recovery of nylon rope, are not reliable and therefore, according to him accused are entitled for bail.

5] Learned counsel for the state has contended that there is strong evidence against the accused of committing offence on account of property dispute and love affair as referred above. According to him deceased have been identified by the clothes and mangalsutra and the death of the deceased was due to throttling. Further according to him there are statements of Kartika and Dinesh son and daughter

of the deceased to show enmity. Learned counsel for the state has contended as evidence point out the guilt of the accused, accused should not be released on bail.

6] The postmortem notes which are filed on record, refers to the cause of death thus “in my opinion deceased of unknown died might be due to throttling and to know exact cause of death viscera and G-17 organs preserved for F.S.C. Opinion”.

7] Learned A.P.P. points out that to know the definite opinion regarding the cause of death of the deceased, F.S.C. opinion is necessary, but no C.F. report is attached. The opinion of the Medical Officer only shows that the deceased might have died due to throttling. Without going into the merits of the other evidence on record, prima facie it appears that in absence of evidence of last seen together, it would be a case of mere suspicion of the guilt of the accused. Further there is no clear chain of circumstances pointing out that these accused are the real culprits. Hence, the accused would be entitled for bail, in the circumstances, however, with some conditions.

8] Each accused be released on bail on furnishing surety and P.R.Bond, in the sum of Rs.20,000/- with a

condition that the accused shall not directly or indirectly tamper with the prosecution evidence and shall not enter in the limits of Bhandara District until further orders, except for the purpose of trial. Bail in trial court. The above observations are in prima facie view of the matter and the trial court should not get influenced in any manner by the above observations, while deciding the case on merits.

JUDGE

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